

SMARA UPDATE



The Quarterly Newsletter of the Department of Conservation - Office of Mine Reclamation

El Dorado County Lawsuit

Lately, there has been a lot of talk, and a lot of erroneous statements made, about the Department of Conservation's lawsuit against El Dorado County. Both the motives and authority of Department of Conservation Director Larry Goldzband have been questioned. While the case itself is complicated, the reality of what happened is really very simple.

Loring Brunius, owner of two mines in El Dorado County, refused to obtain reclamation plans and financial assurances until he was issued an administrative penalty in 1995 by then-Director Michael Byrne. Mr. Brunius initially ignored the penalty until the case was referred to the attorney general's office for

collection. Only then did Mr. Brunius enter into a stipulated judgment with the department and agree to comply with SMARA. It was unfortunate that the department had to take this action, but El Dorado County refused to enforce its own mining ordinance. Mr. Brunius then failed to meet the terms of the stipulated judgment that he, his attorney, and the judge had signed. The department then issued a closure order for both of Mr. Brunius' operations as provided in Public Resources Code Section 2774.1(a).

The closure order, unanimously supported by the State Mining and Geology Board, appeared to spur Mr. Brunius into action. He hastily had "reclamation plans" prepared, plans that fell far short of meeting SMARA minimum requirements. The El Dorado County Planning Commission approved these documents, in spite of department and local citizen testimony that they were woefully inadequate. Upon appeal to the board of supervisors, that body, faced with the same evidence of failure to meet SMARA requirements, decided to

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El Dorado County Lawsuit

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Lead Agency Award Winners Announced

Six cities and four counties have earned recognition for their commitment to responsible mining practices that comply with the state's Surface Mining and Reclamation Act. The cities – Asuza, Bakersfield, Corona, Fremont, Lake Elsinore and Needles, and the counties – Glenn, San Mateo, Santa Clara and Tuolumne – won the Department of Conservation's SMARA Lead Agency Award.

Initiated as a means of fostering state/local government partnerships, the program is in its fourth year. As in the past, selection criteria was based on the lead agency having a permanent certified SMARA ordinance, and 90 percent of the jurisdiction's mines having approved reclamation plans and financial assurances. Allowances were made for jurisdictions with fewer than 10 mines; they could qualify if not more than one mine was out of compliance with SMARA. And, as promised, a new criteria was added this year that required a lead agency complete mine inspections for all mines within its jurisdiction.

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support Mr. Brunius. Given these actions, the department was faced with either accepting patently inadequate reclamation plans, prepared and approved only to avoid closure, or taking the unprecedented step of suing the county to require preparation of adequate plans. After much thought and consideration, the department sued.

The premise of the suit is that lead agencies have the authority to prepare and accept reclamation plans that work best within their jurisdictions, subject to state laws, but, lead agencies do not have the authority to violate those laws through their approvals. As Director Goldzband responded in his letter to California Mining Association President Gene Block, "While it is true that a county is not bound to adopt all the department's recommendations in the reclamation planning process, it is equally true that that the local lead agency is not free to disregard the requirements of SMARA itself."

It's worth noting that while the Brunius closure action was going on, the State Mining and Geology Board investigated a citizen complaint about El Dorado County's administration of SMARA. Based on findings from the investigation, the board initiated actions to begin takeover of county SMARA authority. This, too, likely contributed to the hasty approval of Mr. Brunius' inadequate reclamation plans. Currently, the board is continuing to monitor El Dorado County's actions on the remaining mines

within its jurisdiction, the majority of which have no approved reclamation plan or financial assurance. Should the county continue to fail in carrying out its SMARA responsibilities, the board has stated that it will re-open takeover procedures. You may have heard that vested rights is the crux of this case. It is certainly an issue, but not the

"While it is true that a county is not bound to adopt all the department's recommendations in the reclamation planning process, it is equally true that that the local lead agency is not free to disregard the requirements of SMARA itself."

Director Goldzband

main issue. El Dorado County decided to process inadequate CEQA documents and a reclamation plan for a mine on which they had yet to make a decision if there was even a right to operate. Six months after approving the reclamation plan, the county finally decided to hold a hearing on whether the Weber Creek Quarry was vested. At that hearing, overwhelming evidence was presented that the mine had simply started operating, post-1976, without any kind of permit. However, a former county employee, who had also worked for Mr. Brunius, and is now a county planning commissioner, testified that he had "vested" the mine himself, with no hearing and no written record. The county

board of supervisors found that this was enough to consider the quarry in compliance with local land use ordinances. Interestingly, the county and the Weber Creek Quarry were prominently featured in a recent *Sacramento Bee* article on unregulated airborne asbestos in El Dorado County.

In regard to Mr. Brunius' other quarry, questions and complaints from concerned residents on the unauthorized expansion of the Diamond Quarry, and the effect on it's "vested" status, were simply disregarded by the county. Faced with this evidence of the county ignoring the SMARA requirement that mines must have permits before operating, not to mention its own land-use ordinances, it became clear that the county did not take its lead agency responsibilities to the public seriously. In March, the director decided to add challenges to the land-use permitting procedures on the Brunius mines to the department's lawsuit.

Recently, the county and Mr. Brunius, have been joined in defending against the department's suit by the California Mining Association, the Construction Materials Association of California, and the Southern California Rock Products Association. We regret that these associations are defending a serious, long-term SMARA violator, and the county with the

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worst SMARA compliance record in the state.

Message from the Director



Larry

When mines are out of compliance with the state's Surface Mining and Reclamation Act, the potential impact on public health and safety can be a nightmare. If anyone wants hard, fast evidence of this, they need look no further than El Dorado County. There, recent tests have uncovered potentially hazardous levels of asbestos in the serpentine rock disturbed by mining activities, road construction and residential development.

This situation presents both a health issue and a potential economic problem, as homeowners and developers become understandably concerned about sustaining property values.

El Dorado County's general difficulties enforcing state and local mining regulations – and in particular, problems with the operator of the Weber Creek Quarry -- have been documented in these pages previously. The State Mining and Geology Board has held its findings in abeyance while the Department of Conservation continues to work through the courts to resolve the

quarry's continuing noncompliance with SMARA. We are also trying to work with the county to strengthen its heretofore unenthusiastic approach to mine regulation.

Protecting the public from asbestos dust falls to the local jurisdiction, as it regulates dust, traffic and noise levels of mining operations. But it should come as no surprise that a mining operation that flaunts SMARA, as Weber Creek has done, might also ignore local rules regarding control and monitoring of potentially hazardous dust. The combination of a willfully negligent operator with passive local enforcement is a textbook horror story.

SMARA exists because market failures occur. SMARA must be enforced consistently, throughout the state, to prevent rogue operators from placing profit and convenience before environmental responsibility. This protects all mining interests and the public.

Absent a strong and equitable enforcement program, some local lead agencies could (and have) become lax in their application of SMARA. Asbestos dust goes unmonitored at a quarry in El Dorado County. What has happened in other counties? A landslide of mining debris down an improperly engineered slope, seepage of toxic mining materials into a stream, and a major freeway's integrity compromised by poorly monitored mining activity.

The first step toward avoiding such incidents in the future is proper administration of SMARA at the local level. If lead agencies insist on SMARA compliance, mine operators are much more likely to comply with other health and safety regulations. It is in every jurisdiction's best interest to promote economically viable mine operations. Local products are almost always less expensive and more readily available than imported products. But law-abiding mining operations, their employees, the public, and the environment must never be made casualties of market failure.

Announcement



The Abandoned Mine Lands Unit now has a toll free number for the public to use to report abandoned mines. If you know of or find an abandoned mine please call:

1-877-OLD MINE

Remember - Stay out and stay alive!

Reclamation Tips



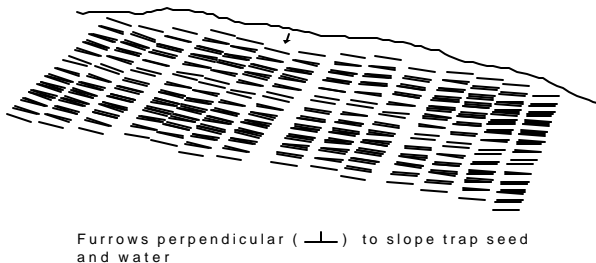
Soil Preparation

"Plants grow in soil" is an obvious statement. That soil needs to be prepared prior to seeding or planting is not often carefully thought about. Several factors need to be considered when preparing soil for revegetation. Soils become compacted by heavy equipment, facilities, stockpiled materials, and even foot traffic. Compacted soils have minimal pore space (the space between soil particles). Gas exchange between the soil and air is restricted and water infiltration is lessened.

Soil preparation is especially important when working on slopes where slippage and erosion can undo revegetation treatments. Smooth slopes are more prone to erosion than are slopes with roughened surfaces. And, of course, a shallower slope (2:1 or less) is easier to revegetate than a steeper one. Several techniques can be employed to roughen slopes and enhance the revegetation effort.

Track Walking.

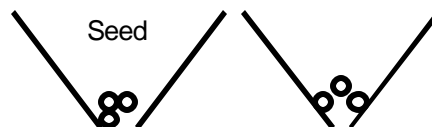
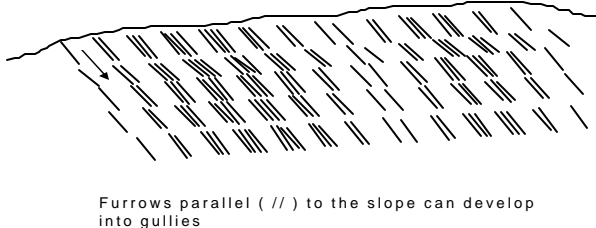
In track walking, a bulldozer or tractor is driven across a slope so that furrows are created perpendicular to the slope.



Imprinting.

Imprinting roughens and opens compacted soils to allow water infiltration and soil/air exchange.

Organic material, seed, water, and topsoil are trapped in the furrows, funneling resources to the bottom of the furrows. Seeds are shielded from the sun and wind.



Sculpting or Moonscaping.

This technique is used widely in arid lands and has been used successfully in the West and in Australia. Large, crescent-shaped excavations are constructed with a backhoe or dozer. Water, seed, and organic material become trapped in



the bottom of the crescent.

Stair-stepping. This technique is gaining wide acceptance for use along highway cut slopes. A specialized blade cuts steps, benches, or small terraces in slopes. The resulting terraced slope breaks sheet flow over a slope and provides microsites favorable to plant establishment.



*Mary Ann Showers,
Environmental Specialist*

The department has no intention of suing any time its comments on SMARA are ignored. But we feel it is very important to send the message that expedience and lax enforcement cannot substitute for adherence to state law.

*Dennis O'Bryant,
Assistant Director*

Computers Available for Donation



In our effort to provide support to lead agencies, the Office of Mine Reclamation has a limited number of surplus computers to donate to local agencies in need of computer equipment for their SMARA program. The computers are 386 models (Compaq, Digital and Hewlett Packard) with Windows 3.1 or 3.11 operating systems and include a monitor and keyboard. The computers may also come loaded with WordPerfect 5.2 word processing software pending our determination of licensing requirements.

The computers will be given to lead agencies that are in need of basic computer hardware to help implement and track mine compliance in their jurisdictions. Agencies receiving a donated computer will be required to complete a donation form for the state's Department of General Services and pay shipping costs.

Those agencies interested in receiving a surplus computer for their SMARA program, may contact Andrew Rush at (916) 323-9198 for more information.

*Andrew Rush,
Environmental Specialist*

Executive Officer's Report

At its January 15, 1998, regularly scheduled business meeting held in Riverside, the State Mining and Geology Board took the following actions on these SMARA issues:

1. Pending agreement on a specific proposed change to the new Surety Bond Forms, the Board recommended the use of the new forms to the director of the Department of Conservation. These forms eventually will replace those surety bond forms currently in use.

2. Adopted Resolution 98-01 affirming that the board's actions for designating specific geographic areas as having regional or statewide mineral significance pursuant to PRC Section 2790 is not a project under the California Environmental Quality Act (CEQA). This action will allow the board to identify and, in most cases, "designate" areas of economically important mineral resources that may have a significant impact on a region's economic development without having to address CEQA.

At its March 12, 1998, regularly scheduled business meeting held in Sacramento, the board took the following actions on these SMARA issues:

1. Denied a request by the County of San Diego for an exemption from SMARA pursuant to PRC Section 2714(f)

to surface mine a six-acre parcel of land preparatory for sale to a developer of residential units. The board determined that the proposed activity was a surface mine, the reclaimed end use of which was to be land suitable for residential development. The proposed activity would have removed up to 800,000 cubic yards of material over a five-year period. According to the board, this did not meet the statutory criteria of minor surface disturbance over a limited duration.

2. Adopted Resolution 98-02 certifying Stanislaus County's revised surface mining ordinance. The new ordinance was based on the board's model ordinance, a copy of which has been sent to all lead agencies to assist them in revising their ordinances when necessary.

3. Accepted the 1997 Annual Mine Reporting Fee Schedule as determined according to California Code of Regulations Section 3696 et seq. This method of determining the annual fee schedule was placed into regulations last year on recommendations from the board's Policy Committee and Legislation & Regulations Committee following a series of public hearings.

4. Adopted *General Guidelines for Reviewing Administrative Penalties on Appeal*. These guidelines will assist the board in evaluating appeals by operators of administrative penalties issued

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Executive Officer's Report

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against them by the director of the Department of Conservation.

5. Adopted interim regulations regarding the procedures for appellate hearings of administrative penalties. These regulations are required by the Administrative Procedure Act of July 1997.

The board took the following actions regarding the appeal of an administrative penalty assessed by the Department of Conservation:

Colson Quarry, California Mine ID #91-42-0008, G. Antolini & Son, Agent; Santa Barbara County - - The board initially upheld the penalty in the amount of \$10,000 for failure to provide the department with a lead agency approved reclamation plan and financial assurance, but modified the amount to \$2,500 after the appellant promised to immediately post a \$350,750 interim financial assurance, and submit an acceptable reclamation plan by September 15, 1998. Failure to meet specific deadlines for posting the interim financial assurance and reclamation plan triggers \$200 per day penalties for each.

*John G. Parrish, Ph.D.
Executive Officer*



SMARA Overview Presentation

Recently, the Office of Mine Reclamation gave brief overviews of SMARA to the planning commissions of two separate lead agencies. The lead agencies requested the overview because one is in the process of updating its mining ordinance and the other has had increased public interest in a potential gold mining operation occurring within its jurisdiction.

Other lead agencies might also like to have a SMARA overview given to their planning commission or even to their counsel or board of supervisors. The overview consists of a brief slide presentation that provides information about the roles and responsibilities of the lead agency, the Department of Conservation, the State Mining and Geology Board and, of course, the operator. The program, running about 20 minutes, also covers the general requirements of a mining permit and reclamation plan.

Interested agencies wishing to have this presentation made to their board or commission should contact Andrew Rush at (916) 323-9198 for more information.

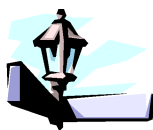
*Andrew Rush,
Environmental Specialist*

BOARD TO REVIEW LEAD AGENCY MINING ORDINANCES

In February 1997, the State Mining and Geology Board sent to all SMARA lead agencies in the state a copy of its *Model SMARA Ordinance Guideline*. In July 1997, the Board notified 90 lead agencies having surface mining ordinances certified by the Board prior to 1991 that these ordinances may be out of date and in need of revisions. The Board encouraged these lead agencies to review their ordinances, and to revise them if needed. Major changes to the Surface Mining and Reclamation Act (SMARA) occurred in 1991 with the enactments of AB 3551, AB 3909 and AB 1506. Those ordinances that do not reflect these major changes will need to be updated.

In January 1998, the Board commenced its own review of these pre-1991 ordinances. The Board will begin notifying lead agencies by letter, pursuant to PRC Section 2774.5, of major deficiencies in their ordinances. SMARA gives lead agencies a specific time frame in which to revise their ordinances. Failure to bring the ordinance into accordance with SMARA mandates the Board to assume lead agency responsibilities for reviewing and approving new reclamation plans until the Board certifies a new local ordinance.

*John Parrish, Ph.D.
Executive Officer*



Compliance Corner

In May, the Office of Mine Reclamation mailed the 1997 Mining Operation Annual Report form to owners of mining operations. Additionally, OMR mailed a notice of the mailing to the mine agent. As in past years, the report must be completed and returned to OMR and a copy to the appropriate lead agency by July 1 to avoid late charges.

Although the report form is unchanged, for the first time in seven years the annual reporting fees have increased. Since statute limits the maximum per mine reporting fee to \$2,000, this fee category will remain the same. However, fees for most operators below the \$2,000 per mine cap were increased for the 1997 reporting year. This increase, pursuant to State Mining and Geology Board regulations, was necessary to account for higher administrative costs resulting over the last seven years and also due, in part, to increased efforts in the outreach and compliance programs.

As required by statute, once OMR receives the annual reports, reporting and compliance unit staff will review the reports, information submitted with the reports, and mine files for compliance with the annual reporting requirements of PRC Section 2207. Based on these reviews, OMR is required to send a letter to the operator and their agent detailing any deficiencies with the reporting requirements. To expedite these reviews and decrease the number of deficiency letters sent, OMR encourages operators to submit accurate and complete reports. Operators should pay particular attention to the following requirements that generate the bulk of annual deficiency letters:

- If a copy of the reclamation plan, financial assurance and proof of their approval have not been previously submitted to OMR, they should be submitted with the annual report.
- If the lead agency inspected the operation in 1997 and completed a Surface Mining Inspection Report, a copy of the report should be submitted by the operator with their 1997 annual report.
- All operators must designate an agent who resides in California.
- The 1997 annual production in ounces, pounds or tons (not cubic yards) must be reported.
- The correct annual reporting fee based on the mine status and/or production must be submitted by July 1, 1998. Fees submitted after this date must include the late fee amount.

Any operator who needs a copy of the report form should contact Carolyn Mefferd with the Reporting and Compliance Unit at (916) 323-9198.

*Tim Kustic,
Principal Compliance Engineer*



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Lead Agency Award Winners Announced

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This year's new requirement made a significant difference in the number of lead agencies receiving an award. We congratulate these agencies for their efforts to ensure compliance with SMARA and hope that next year's list of recipients will be longer, even as we add new criteria to move toward full compliance with SMARA.

Andrew Rush,

Inspection Workshop Scheduled

An inspection workshop has been scheduled for July 23rd and 24th at the Stanislaus County Community Services Facility in the City of Ceres. The workshop will be a one and one-half day session on performing mine inspections and reviewing cost estimates. The workshop will include a field trip to Santa Fe Aggregates' Waterford Plant to perform a mock inspection. Interested individuals may contact Andrew Rush at (916) 323-9198 to register. Participation will be limited so early registration is recommended.

The *SMARA Update* is a quarterly publication of the Department of Conservation's Office of Mine Reclamation, 801 K Street, MS 09-06, Sacramento, California 95814, (916) 323-9198, <http://www.consrv.ca.gov/omr/index.html>. The purpose of this publication will be that of imparting the latest in reclamation tips, as well as changes in legislation or interpretation of existing statutes by court decisions.

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